

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Assessment of Administrative Fines

Sections Affected: Title 16, Division 39, California Code of Regulations, Section 4141.

SPECIFIC PURPOSE OF THE REGULATIONS:

The specific purpose of the proposed regulations is to amend California Code of Regulations section 4141 to specify that administrative fines proposed by the Board of Occupational Therapy would not be more than \$5,000 for each violation, to add violations to each class of citation, and to raise the maximum fine for each class of citation.

FACTUAL BASIS/NECESSITY:

Existing law authorizes the Board to issue citations to licensees, certificate holders and unlicensed persons for violating the Occupational Therapy Practice Act (OTPA) or any regulations adopted thereto. The passage of Senate Bill 362 (Figueroa, Chapter 788, Statutes of 2003), increasing the amount of administrative fines to \$5,000, has made it necessary for the Board to amend section 4141 of the California Code of Regulations to reflect this increase.

Existing law requires that the Board classify each citation violation according to the nature of the violation. Currently, there are three classifications as follows:

- Class "A" violations are more serious in nature and may include, but are not limited to, violations which resulted in or had significant potential for patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure public safety. Fines currently range from \$1,001 to \$2,000.
- Class "B" violations are less serious in nature and may include, but are not limited to, violations which could have resulted in patient harm. Typically some degree of mitigation will exist. Fines currently range from \$501 to \$1,000.
- A class "C" violation is a minor or technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care. Fines currently range from \$50 to \$500.

The proposed regulations would add the following violations under Class "A" violations: fraudulent medical billing, and practicing without a current and active license for more than one year. The maximum fine for a Class "A" violation would be increased to \$5,000. The following violations would be added as Class "B" violations: failure to provide adequate supervision to an occupational therapy

assistant, limited permit holder, student, or occupational therapy aid, resulting in no patient harm; providing advanced practice services without board approval; and, practicing without a current and active license for 91 to 365 days. The maximum fine for a Class "B" violation would be increased to \$2,500. The proposal would clarify that Class "C" violations would include practicing without a current and active license for 90 days or less. The maximum fine for a Class "C" violation would be increased to \$1,000. Failure to notify the Board of a change of address would no longer be a Class "C" violation. The proposal would establish a new Class "D" violation for licensees or certificate holders that fail to notify the Board of a change of address within thirty days. The fine range for a Class "D" violation would be \$50 to \$250.

Although the regulations do not restrict violations to specific classes, the Board would like the regulations to more accurately reflect the type of violations cited in each class. This will ensure that licensees and certificate holders are aware of the penalties for specific violations of the OTPA.

UNDERLYING DATA:

None.

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business. The proposed regulations will only affect licensees, certificate holders or unlicensed persons.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.